

R E M A R K S

A. INTRODUCTION

Claims 1-27 are pending, contain allowable subject matter and are subject to restriction.

B. ELECTION/RESTRICTION REQUIREMENT

Applicants elect Invention I (Claims 1-23) for examination with traverse.

Applicants are grateful to the Examiner for holding a Telephone Interview on June 2, 2009, with Applicants' representative regarding the present requirement for election/restriction.

During the conversation, Applicants asked the Examiner to reconsider the propriety of the present restriction because the claims, as clearly indicated in the Telephone Interview mailed June 5, contain allowable subject matter. Accordingly, there is no serious burden that can be established by substantial evidence to support the restriction requirement, because examination on the merits is effectively completed. The Examiner's Summary of the Telephone Interview states (emphasis added):

Examiner explained that Applicant's timely submission of TD's overcame the double patenting rejections **but the claims were not in condition for allowance because Claims 24-27 were, in the Examiner's opinion, directed towards an invention distinct from the subject matter of Claims 1-23.** Examiner indicated that if Claims 24-27 were either cancelled or made dependant on any other independent claim, this issue would be overcome & the application would be allowed. Applicant requested an official correspondence. As such, this Interview Summary is accompanied by an Election/Restriction requirement.

Thus, the only alleged reason why a Notice of Allowance was not provided was the recent determination, after determining that the claims were otherwise in "condition for allowance" that Claims 24-27 are directed to an invention distinct from that of Claim 1-23. The Summary explicitly states that cancellation of Claims 24-27 would result in a Notice of Allowance—i.e., no further examination is required.

Applicants stated to the Examiner that, assuming for the sake of argument that Claims 24-27 are directed to a different invention, there is no serious burden on the Office to examiner any allegedly multiple and distinct inventions because examination has effectively been completed, based on the Examiner's statement

that the claims would be “in condition for allowance” but for the alleged distinctness of the claim sets.

As stated to the Examiner during the Telephone Interview, where all of pending Claims 1-27 have been examined, together, multiple times, and the Office has effectively concluded that the claims are in condition for allowance and effectively ended prosecution on the merits, no policy goal or efficiency goals would be advanced by merely requiring that Applicants cancel allowable claims—there would be no reduction in the burden of examination, because no further examination is necessary. To the contrary, requiring a restriction to eliminate allowable claims would force Applicants to file a new (divisional) application in order to again receive allowance of allowable claims 24-27, contributing to the Office’s backlog of pending applications.

For these reasons, Applicants respectfully request that the Examiner reconsider and withdraw the requirement for restriction in the present application, and permit all of allowable Claims 1-27 to proceed to issuance.

C. PETITION FOR EXTENSION OF TIME TO RESPOND & AUTHORIZATION TO CHARGE APPROPRIATE FEES

Please grant a petition for any extension of time required to make this Response timely. Please also charge any other appropriate fees set forth in 37 C.F.R. §§ 1.16 – 1.18 for this paper and for any accompanying papers to:

Deposit Account: 50-0271

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Please credit any overpayment to the same account.

D. CONCLUSION

It is submitted that all of the claims are in condition for allowance. The Examiner's consideration is respectfully requested.

If the Examiner has any questions regarding this paper or the present application, the Examiner is cordially requested to contact Michael Downs at telephone number (203) 461-7292 or via electronic mail at mdowns@walkerdigital.com.

Respectfully submitted,

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Date

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